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Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 76.51 )  
of the Commission's Rules To )  
Include Newton, New Jersey in )  
the Market Currently Designated )  
the "New York, New York-Linden- )  
Paterson-Newark, New Jersey" )  
Market )

MM Docket No. 93-290

TO: Chief, Mass Media Bureau

COMMENTS

Mountain Broadcasting Corporation ("Mountain"), licensee of television station WMBC-TV, which operates on Channel 63 in Newton, New Jersey, by its attorneys, hereby submits its comments on the above-referenced Notice of Proposed Rule Making ("NPRM"), DA 93-1349, released November 16, 1993.<sup>1</sup> Mountain filed the petition for rule making that initiated this proceeding and continues to support strongly its proposal to amend Section 76.51 of the Commission's Rules to redesignate the "New York, New York-Linden-Paterson-Newark, New Jersey" market as "New York, New York-Linden-Paterson-Newark-Newton, New Jersey." Only with such redesignation will WMBC-TV be able to compete on an equal footing with other New York City area television stations for programming, national and regional advertising, and viewing audiences.

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<sup>1</sup> 58 Fed. Reg. 62,085 (Nov. 24, 1993).

As set forth in its Petition for Rule Making<sup>2</sup> and as acknowledged by the Commission in the NPRM,<sup>3</sup> WMBC-TV does compete for audiences and advertisers throughout much of the New York, New York-Linden-Paterson-Newark, New Jersey television market. As the NPRM also acknowledges, Mountain's Petition presented evidence establishing commonality between Newton and the New York City market as a whole and made clear that Mountain's proposal is consistent with the Commission's policies regarding redesignation of a hyphenated television market.<sup>4</sup>

In its Petition, Mountain demonstrated the existence of such competition and commonality by satisfying the four factors that the Commission evaluates in deciding whether to redesignate a market.<sup>5</sup> In particular, as the Petition explained, redesignation is imperative in this case because WMBC-TV has been on-the-air less than a year and faces huge obstacles in competing

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<sup>2</sup> Petition for Rulemaking, filed June 14, 1993 ("Petition"). Mountain hereby incorporates by reference its Petition, a copy of which is attached to these comments.

<sup>3</sup> NPRM at ¶ 13.

<sup>4</sup> Id.

<sup>5</sup> These factors include

- (1) the distance between the proposed community and the market-designated communities;
- (2) the extent that redesignation to include the proposed community would allow the station additional rights in areas beyond its Grade B contour;
- (3) the particularized need of the station; and
- (4) the resulting benefit to the public from redesignation.

with more established television stations in its market, most of which are licensed to communities that were included in the designated market simply because the particular station was on-the-air when Section 76.51's television major market list was compiled over two decades ago.

Without redesignation, it is unlikely that WMBC-TV will be carried on most of the cable systems in the New York City Area of Dominant Influence ("ADI"). Although WMBC-TV has mandatory signal carriage rights throughout the New York ADI, it can in no way afford to reimburse cable systems located within that ADI but beyond the thirty-five mile zone surrounding Newton for the staggering level of copyright costs the systems claim that they would incur in carrying WMBC-TV because the station is deemed to be a "distant" or partially "distant" signal rather than a "local" signal that can be carried without such fees. As noted in the Petition, these claims amount to over \$9 million per six-month period. Redesignation of the market to include Newton would give WMBC-TV "local" signal status and would allow these cable systems to carry WMBC-TV's signal without increasing their copyright royalty payments.

Equally significant, redesignation of the existing New York market will greatly benefit the viewers in the area and advance concerns that lie at the heart of the FCC's public interest mandate and were central to passage of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). As a UHF station unaffiliated with any major television network, WMBC-TV occupies a special niche in the New York ADI. Its family-oriented format is intended to offer adults,

teenagers, and children programming including less violence and sexual content than that presented on other area network and independent stations. Moreover, WMBC-TV is developing and hopes to continue to develop additional programming which will focus more closely on the needs and interests of suburban areas in the New York ADI which are often ignored by established New York City stations.<sup>6</sup> The licensee's voting stock is owned entirely by Asian Americans, and the station proposes to offer not only general interest programming but, as improving finances allow, more and more foreign language programming for the New York ADI's substantial Asian population.<sup>7</sup>

In adopting the 1992 Cable Act, Congress gave television stations mandatory carriage rights throughout their ADI's in recognition of the fact that the ADI is the area in which stations must compete with other media outlets for programming, advertising, and audience. Congress specifically rejected a more limited mileage-based approach to defining must carry rights finding that a station's ADI is coextensive with the area in which the station operates economically and provides local service.<sup>8</sup> Congress also recognized that carriage on cable systems within a station's ADI is today the only effective means

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<sup>6</sup> In its Petition, Mountain had included a sample programming schedule. Updated versions of this schedule for the weeks in December are attached, as is a list of WMBC-TV's children's programming. As noted, Mountain has plans to expand its local programming.

<sup>7</sup> WMBC-TV currently offers one hour of foreign language programming from 7:30-8:30 a.m. on Sundays. Again, as noted, WMBC-TV has plans to expand this programming.

<sup>8</sup> See, e.g., H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992).

by which local television stations gain access to viewers and that mandatory carriage is essential to preserve the public interest benefits of over-the-air television.<sup>9</sup>

Newton, New Jersey is without question part of the New York City ADI, and WMBC-TV is presumptively entitled to carriage in the ADI. Any attempt to circumscribe the area within which WMBC-TV can actually or effectively exercise its "must carry" rights by adopting the alternatives, such as "partial rehyphenation," suggested in the NPRM would be contrary to Congressional intent in adopting the 1992 Cable Act. Very recently, the Commission has found that rehyphenation, rather than an alternative partial solution, is appropriate in the Los Angeles market which ranks second only to New York City among Arbitron's ADI's and is similarly large in geographic area.<sup>10</sup>

Accordingly, for the reasons set forth above and in its Petition, Mountain respectfully urges the Commission to adopt expeditiously a Report and Order amending Section 76.51 of its

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<sup>9</sup> 1992 Cable Act, Pub L. No. 102-385, § 2 (1992), reprinted in U.S.C.C.A.N. (106 Stat.) 1461, which sets forth the Congressional findings regarding mandatory carriage.

<sup>10</sup> Report and Order (Los Angeles-San Bernadino-Corona-Fontana, California), MM Docket No. 93-207, DA 93-144, released December 7, 1993. In its comments, the petitioner in that case who was seeking to have Riverside added to the Section 76.51 designation of the Los Angeles market had demonstrated a particularized need for the market's redesignation based on the fact that, without it, the petitioner "would unfairly by [sic] required to pay substantial copyright royalty reimbursements not charged against other stations in the market, . . ." Comments of Fouce Amusement Enterprises, Inc., filed August 18, 1993, at page 3. The Commission adopted the change despite opposition from a local cable operator who had contended that making the change would only make it easier for the station to obtain "must-carry" rights in distant communities because of a decrease in copyright royalty fees. Report and Order, MM Docket No. 93-207, at ¶ 3.

rules, redesignating the New York, New York-Linden-Paterson-Newark, New Jersey market as the New York, New York-Linden-Paterson-Newark-Newton, New Jersey market.

Respectfully submitted,

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Its Attorneys

December 20, 1993

# WMBC-TV 63 Programming Schedule, Dec 1 - Dec 4, 1993

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
	28	29	30	1	2	3	4	
6:00 a	Plant Groom	Gateway to Truth	Talk to Me				Talk to Me	6:00 a
6:30 a	Psychiatry & You	Mission '93	LIVE CALL IN				LIVE CALL IN	6:30 a
6:00 a	Living by the Word	Joy of Music	Good Ole Gospel	Jessy Dixon	Homeland Harmony	Deen & Mary	Beverly Exercise	6:00 a
6:30 a	God's News	You Need To Know					Paul Gaudino Exercise	6:30 a
7:00 a	Variety	Variety	Variety	Variety	Variety	Variety	Annie Oakley	7:00 a
7:30 a	Korean Programming	Variety	Variety	Variety	Variety	Variety	Robin Hood	7:30 a
8:00 a	Gospel	Morning Stretch					Golf Dynamics	8:00 a
8:30 a	Hour	Variety	Variety	Variety	Variety	Variety	See & Hear Piano	8:30 a
9:00 a	Reach Out & Touch Js	Variety	Variety	Variety	Variety	Variety	Kids Like You	9:00 a
9:30 a	Golf Dynamics	Young at Heart	Animal Clinic	Just For Us	Woman's Touch	Variety	Davey & Goliath	9:30 a
10:00 a	Movie:	Action 80's					Zoo Life	10:00 a
10:30 a	MILLION DOLLAR KID	-					Final Score	10:30 a
11:00 a	1944	COPE					Wrestling	11:00 a
11:30 a		LIVE CALL IN					(WCICW)	11:30 a
12:00 N	Crosswalk	Something Beautiful					Celebrity Sports &	12:00 N
12:30 p	See & Hear Piano	-					Variety	12:30 p
1:00 p	Movie:	Movie:	Movie:	Movie:	Movie:	Movie:	Buck McNeely	1:00 p
1:30 p	SCARLET STREET	GO FOR BROKE	MY FAVORITE	BEHAVE YOURSELF	BEYOND TOMORROW	CODE OF	Hook On Flash'n	1:30 p
2:00 p	1945	1951	BRUNETTE	1951	1940	SCOTLAND YARD	Big Game Adv	2:00 p
2:30 p							John Fox Outdoor	2:30 p
3:00 p	Fun Fishing	Variety	Variety	Variety	Variety	Variety	Outdoors/Dean Durham	3:00 p
3:30 p	Texas Angler	Variety	Variety	Variety	Variety	Variety	Honey Hole	3:30 p
4:00 p	Scuba World	The Children's Room					Freshwater Adventure	4:00 p
4:30 p	On Pit Road	Vintage Cartoons					See & Hear Piano	4:30 p
5:00 p	Little Peoples Theater:	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Variety	Variety	5:00 p
5:30 p	GULLIVER'S TRAVELS	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Variety	5:30 p
6:00 p	1939	Sunshine Factory	Gerbert	Sunshine Factory	Agape Land	Sunshine Factory	Cookware	6:00 p
6:30 p		John Ankerberg	Catch The Spirit	There's Hope	Mission '93	Prestonwood Present.	Home Town	6:30 p
7:00 p	Country	Jewish Voice	DocuNews	Country	DocuNews	DocuNews	Good Ole Gospel	7:00 a
7:30 p	Count Down	DocuNews	-	Count Down	-	-	Southern Gospel Music	7:30 p
8:00 p	Movie:	-	Variety	Auto Vision	Life Choice	Sail New England	Sing	8:00 p
8:30 p	MEET JOHN DOE	Capital News					Out America	8:30 p
9:00 p	1941	Variety	American Trucking	Variety	Variety	Variety	Rally	9:00 p
9:30 p		Variety	Treasure Search	Variety	Variety	Variety	Tonight	9:30 p
10:00 p		Variety	Variety	Movie:	Movie:	Movie:	Family	10:00 p
10:30 p		Variety	Movie:	ENEMY OF WOMEN	SPECIAL AGENT	SLIGHTLY	Showcase	10:30 p
11:00 p	Variety	Power Play	NOSFERATU	1946	1940	HONORABLE	Variety	11:00 p
11:30 p	Inside Hair Fashion	Country	1922				Variety	11:30 p
12:00 M	Gospel	Variety	Variety	Variety	Variety	Variety	Movie:	12:00M
12:30 a	Soundstage	Variety	Variety	Variety	Variety	Variety	Old Barn Dance	12:30 a
1:00 a	Word of God	Variety	Variety	Variety	Variety	Variety	1938	1:00 a
1:30 a	Changed Lives	Variety	Variety	Variety	Variety	Variety	Variety	1:30 a
2:00 a	Family	Variety	Variety	Variety	Variety	Variety	Movie:	2:00 a
2:30 a	Enrichment	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Solid Rock VDO	Time is Running Out	2:30 a
3:00 a	Catch the Sprt	Talk to Me					1950	3:00 a
3:30 a	Central Message	LIVE CALL IN					Variety	3:30 a
4:00 a	Bible & Life	Talk to Me					Profiles	4:00 a
4:30 a	Good News	LIVE CALL IN					Super Handyman	4:30 a

\* This program schedule is subject to change without notice. (Printed November 15, 1993: 1:26 PM)

# WMBC-TV 63 Programming Schedule, Dec 5 - Dec 11, 1993

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
	5	6	7	8	9	10	11	
5:00 a	Plant Groom	Gateway to Truth	Talk to Me				Talk to Me	5:00 a
5:30 a	Psychiatry & You	Mission '93	LIVE CALL IN				LIVE CALL IN	5:30 a
6:00 a	Living by the Word	Joy of Music	Good Ole Gospel	Jessey Dixon	Homeland Harmony	Dean & Mary	Beverly Exercise	6:00 a
6:30 a	God's News	You Need To Know					Paul Gaudino Exercise	6:30 a
7:00 a	Variety	Variety	Variety	Variety	Variety	Variety	Annie Oakley	7:00 a
7:30 a	Korean Programming	Variety	Variety	Variety	Variety	Variety	Robin Hood	7:30 a
8:00 a	Gospel	Morning Stretch					Golf Dynamics	8:00 a
8:30 a	Hour	Variety	Variety	Variety	Variety	Variety	See & Hear Piano	8:30 a
9:00 a	Reach Out & Touch Ja	Variety	Variety	Variety	Variety	Variety	Kids Like You	9:00 a
9:30 a	Golf Dynamics	Young at Heart	Animal Clinic	Just For Us	Woman's Touch	Variety	Devey & Goliath	9:30 a
10:00 a	Movie:	Action 60's					Zoo Life	10:00 a
10:30 a	A Man About	-					Final Score	10:30 a
11:00 a	The House	COPE					Wrestling	11:00 a
11:30 a	1947	LIVE CALL IN					(WCICW)	11:30 a
12:00 N	Crosswalk	Something Beautiful					Celebrity Sports &	12:00 N
12:30 p	See & Hear Piano	-					Variety	12:30 p
1:00 p	Movie:	Movie:	Movie:	Movie:	Movie:	Movie:	Buck McNeely	1:00 p
1:30 p	Loma Doone	Blue Beard	Blood on the Sun	The Limping Man	On Approval	The Naked Hills	Hook On Fish'n	1:30 p
2:00 p							Big Game Adv	2:00 p
2:30 p	1935	11944	1945	1953	1944	1956	John Fox Outdoor	2:30 p
3:00 p	Fun Fishing	Variety	Variety	Variety	Variety	Variety	Outdoors/Dean Durham	3:00 p
3:30 p	Texas Angler	Variety	Variety	Variety	Variety	Variety	Honey Hole	3:30 p
4:00 p	Scuba World	The Children's Room					Freshwater Adventure	4:00 p
4:30 p	On Pit Road	Vintage Cartoons					See & Hear Piano	4:30 p
5:00 p	Little Peoples Theater:	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Variety	Variety	5:00 p
5:30 p	Oliver Twist	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Variety	5:30 p
6:00 p		Sunshine Factory	Gerbert	Sunshine Factory	Agape Land	Sunshine Factory	Cookware	6:00 p
6:30 p	1933	John Ankerberg	Catch The Spirit	There's Hope	Mission '93	Prestonwood Present.	Home Town	6:30 p
7:00 p	Country	Jewish Voice	Docunews	Country	Docunews	Docunews	Good Ole Gospel	7:00 a
7:30 p	Count Down	Docunews	-	Count Down	-	-	Southern Gospel Music	7:30 p
8:00 p	Milton Berle's Comedy	-	Variety	Auto Vision	Life Choice	Sell New England	Sing	8:00 p
8:30 p	Carnival of Comedy	Capital News					Out America	8:30 p
9:00 p	-	Variety	American Trucking	Variety	Variety	Variety	Rally	9:00 p
9:30 p	-	Variety	Treasure Search	Variety	Variety	Variety	Tonight	9:30 p
10:00 p	-	Variety	Variety	Movie:	Movie:	Movie:	A Soul Children's	10:00 p
10:30 p	Comedy Greats	Variety	Movie:	The Green Glove	The Franchise	The Guilded Cage	Christmas	10:30 p
11:00 p	Variety	Power Play	Three Legionaires		Affair		Variety	11:00 p
11:30 p	Inside Hair Fashion	Country	1937	1952	1952	1956	Variety	11:30 p
12:00 M	Gospel	Variety	Variety	Variety	Variety	Variety	Movie:	12:00M
12:30 a	Soundstage	Variety	Variety	Variety	Variety	Variety	Purple Vigilantes	12:30 a
1:00 a	Word of God	Variety	Variety	Variety	Variety	Variety	1938	1:00 a
1:30 a	Changed Lives	Variety	Variety	Variety	Variety	Variety	Variety	1:30 a
2:00 a	Family	Variety	Variety	Variety	Variety	Variety	Movie:	2:00 a
2:30 a	Enrichment	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Solid Rock VDO	Diamond Safari	2:30 a
3:00 a	Catch the Sprit	Talk to Me					1958	3:00 a
3:30 a	Central Message	LIVE CALL IN					Variety	3:30 a
4:00 a	Bible & Life	Talk to Me					Profiles	4:00 a
4:30 a	Good News	LIVE CALL IN					Super Handyman	4:30 a

\* This program schedule is subject to change without notice. (Printed November 15, 1993: 1:25 PM)

# WMBC-TV 63 Programming Schedule, Dec 12 - Dec 18, 1993

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
	12	13	14	15	16	17	18	
5:00 a	Plant Groom	Gateway to Truth	Talk to Me				Talk to Me	5:00 a
5:30 a	Psychiatry & You	Mission '93	LIVE CALL IN				LIVE CALL IN	5:30 a
6:00 a	Living by the Word	Joy of Music	Good Ole Gospel	Jessy Dixon	Homeland Harmony	Dean & Mary	Beverly Exercise	6:00 a
6:30 a	God's News	You Need To Know					Paul Gaudino Exercise	6:30 a
7:00 a	Variety	Variety	Variety	Variety	Variety	Variety	Annie Oakley	7:00 a
7:30 a	Korean Programming	Variety	Variety	Variety	Variety	Variety	Robin Hood	7:30 a
8:00 a	Gospel	Morning Stretch					Golf Dynamics	8:00 a
8:30 a	Hour	Variety	Variety	Variety	Variety	Variety	See & Hear Piano	8:30 a
9:00 a	Reach Out & Touch Js	Variety	Variety	Variety	Variety	Variety	Kids Like You	9:00 a
9:30 a	Golf Dynamics	Young at Heart	Animal Clinic	Just For Us	Woman's Touch	Variety	Devey & Goliath	9:30 a
10:00 a	Movie:	Action 80's					Zoo Life	10:00 a
10:30 a	Cheers For Miss	-					Final Score	10:30 a
11:00 a	Bishop	COPE					Wrestling	11:00 a
11:30 a	1941	LIVE CALL IN					(WCICW)	11:30 a
12:00 N	Crosswalk	Something Beautiful					Celebrity Sports &	12:00 N
12:30 p	See & Hear Piano	-					Variety	12:30 p
1:00 p	Movie:	Movie:	Movie:	Movie:	Movie:	Movie:	Buck McNeely	1:00 p
1:30 p	Laughing At Life	Bermuda Affair	Guilty of Treason	Father's Little Dividend	The Chase	The Bigamist	Hook On Fish'n	1:30 p
2:00 p							Big Game Adv	2:00 p
2:30 p	1933	1956	1950	1951	1946	1953	John Fox Outdoor	2:30 p
3:00 p	Fun Fishing	Variety	Variety	Variety	Variety	Variety	Outdoors/Dean Durham	3:00 p
3:30 p	Texas Angler	Variety	Variety	Variety	Variety	Variety	Honey Hole	3:30 p
4:00 p	Scuba World	The Children's Room					Freshwater Adventure	4:00 p
4:30 p	On Pit Road	Vintage Cartoons					See & Hear Piano	4:30 p
5:00 p	Little Peoples Theater:	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Variety	Variety	5:00 p
5:30 p	Held!	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Variety	5:30 p
6:00 p		Sunshine Factory	Gerbert	Sunshine Factory	Agape Land	Sunshine Factory	Cookware	6:00 p
6:30 p	Color (1952)	John Ankerberg	Catch The Spirit	There's Hope	Mission '93	Prestonwood Present.	Home Town	6:30 p
7:00 p	Country	Jewish Voice	Docunews	Country	Docunews	Docunews	Good Ole Gospel	7:00 p
7:30 p	Count Down	Docunews	-	Count Down	-	-	Southern Gospel Music	7:30 p
8:00 p	Milton Berle's Comedy	-	Variety	Auto Vision	Life Choice	Sail New England	Sing	8:00 p
8:30 p	Carnival of Comedy	Capital News					Out America	8:30 p
9:00 p	Maglo of The Stars	Variety	American Trucking	Variety	Variety	Variety	Rally	9:00 p
9:30 p	-	Variety	Treasure Search	Variety	Variety	Variety	Tonight	9:30 p
10:00 p	Comery Greats	Variety	Variety	Christmas From	Movie: Sofia	Night of Nights	In All of His Glory	10:00 p
10:30 p	Comedy Greats	Variety	Movie:	The Netherlands				10:30 p
11:00 p	Variety	Power Play	The Unstoppable Man	Homeland Harmony		Variety	Christmas with a	11:00 p
11:30 p	Inside Hair Fashion	Country	1950	Variety		Variety	Touch of Soul	11:30 p
12:00 M	Gospel	Variety	Variety	Variety	Variety	Variety	Movie:	12:00M
12:30 a	Soundstage	Variety	Variety	Variety	Variety	Variety	Reg'lar Fellers	12:30 a
1:00 a	Word of God	Variety	Variety	Variety	Variety	Variety	1941	1:00 a
1:30 a	Changed Lives	Variety	Variety	Variety	Variety	Variety	Variety	1:30 a
2:00 a	Family	Variety	Variety	Variety	Variety	Variety	Movie:	2:00 a
2:30 a	Enrichment	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Solid Rock VDO	Mr. Wise Guy	2:30 a
3:00 a	Catch the Sprit	Talk to Me					1942	3:00 a
3:30 a	Central Message	LIVE CALL IN					Variety	3:30 a
4:00 a	Bible & Life	Talk to Me					Profiles	4:00 a
4:30 a	Good News	LIVE CALL IN					Super Handyman	4:30 a

# WMBC-TV 63 Programming Schedule, Dec 19 - Dec 25, 1993

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
	19	20	21	22	23	24	25	
6:00 a	Plant Groom	Gateway to Truth	Talk to Me				Talk to Me	6:00 a
6:30 a	Psychiatry & You	Mission '93	LIVE CALL IN				LIVE CALL IN	6:30 a
6:00 a	Living by the Word	Joy of Music	Good Ole Gospel	Jessy Dixon	Homeland Harmony	Dean & Mary	Beverly Exercise	6:00 a
6:30 a	God's News	You Need To Know					Paul Gaudino Exercise	6:30 a
7:00 a	Variety	Variety	Variety	Variety	Variety	Variety	Annie Oalday	7:00 a
7:30 a	Korean Programming	Variety	Variety	Variety	Variety	Variety	Robin Hood	7:30 a
8:00 a	Gospel	Morning Stretch					Golf Dynamics	8:00 a
8:30 a	Hour	Variety	Variety	Variety	Variety	Variety	See & Hear Piano	8:30 a
8:00 a	Reach Out & Touch Js	Variety	Variety	Variety	Variety	Variety	Kids Like You	8:00 a
9:30 a	Golf Dynamics	Young at Heart	Animal Clinic	Just For Us	Woman's Touch	Variety	Devey & Gollath	9:30 a
10:00 a	Movie:	Action 80's					Zoo Life	10:00 a
10:30 a	Ring Around The Moon	-					Final Score	10:30 a
11:00 a	1935	A Precious	Hande's Messiah	COPE	A Soul Children's	Dallas Christmas	Wrestling	11:00 a
11:30 a		Moments Christmas		LIVE CALL IN	Christmas	Festival	(WCICW)	11:30 a
12:00 N	Crosswalk	Something Beautiful					Celebrity Sports &	12:00 N
12:30 p	See & Hear Piano	-					Variety	12:30 p
1:00 p	Movie:	Movie:	Movie:	Movie:	Movie:	Movie:	Buck McNeely	1:00 p
1:30 p	The Amazing Mr. X	The Kansan	Whistle Stop	When Thief Meets	His Girl Friday	Beyond Tomorrow	Hook On Fish'n	1:30 p
2:00 p				Thief			Big Game Adv	2:00 p
2:30 p	1948	1943	1946	1937	1940	1940	John Fox Outdoor	2:30 p
3:00 p	Fun Fishing	Variety	Variety	Variety	Variety	Variety	Outdoors/Dean Durham	3:00 p
3:30 p	Texas Angler	Variety	Variety	Variety	Variety	Variety	Honey Hole	3:30 p
4:00 p	Scuba World	The Children's Room					Freshwater Adventure	4:00 p
4:30 p	On PR Road	Vintage Cartoons					See & Hear Piano	4:30 p
5:00 p	Little Peoples Theater:	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Variety	Variety	5:00 p
5:30 p	Bill and Coo	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Variety	5:30 p
6:00 p		Sunshine Factory	Gerbert	Sunshine Factory	Agape Land	Sunshine Factory	Cookware	6:00 p
6:30 p	Color (1947)	John Ankerberg	Catch The Spirit	There's Hope	Mission '93	Prestonwood Presnt.	Home Town	6:30 p
7:00 p	Country	Jewish Voice	Docunews	Country	Docunews	Docunews	Good Ole Gospel	7:00 a
7:30 p	Count Down	Docunews	-	Count Down	-	-	Southern Gospel Music	7:30 p
8:00 p	Milton Berle's Comedy	-	Variety	Auto Vision	Life Choice	Sell New England	Sing	8:00 p
8:30 p	Milton Loves Lucy	Capital News					Out America	8:30 p
9:00 p	Legend of Comedy	Variety	American Trucking	Variety	Variety	Variety	Rally	9:00 p
9:30 p	-	Variety	Treasure Search	Variety	Variety	Variety	Tonight	9:30 p
10:00 p	Comery Greets	Variety	Variety	Nights of Nights	From Heaven's	Dallas Christmas	A Precious Moments	10:00 p
10:30 p	Comedy Greets	Variety	Movie:		Throne	Festival	Christmas	10:30 p
11:00 p	Variety	Power Play	Reaching For	Homeland Harmony	CCM-TV Christmas	Christmas at	Variety	11:00 p
11:30 p	Inside Hair Fashion	Country	The Moon 1931	Variety	Variety	Peachtree	Variety	11:30 p
12:00 M	Gospel	Variety	Variety	Variety	Variety	Variety	Movie:	12:00M
12:30 a	Soundstage	Variety	Variety	Variety	Variety	Variety	Thank You, Mr. Moto	12:30 a
1:00 a	Word of God	Variety	Variety	Variety	Variety	Variety	1937	1:00 a
1:30 a	Changed Lives	Variety	Variety	Variety	Variety	Variety	Variety	1:30 a
2:00 a	Family	Variety	Variety	Variety	Variety	Variety	Movie:	2:00 a
2:30 a	Enrichment	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Solid Rock VDO	The Man Who Dared	2:30 a
3:00 a	Catch the Sprit	Talk to Me					1933	3:00 a
3:30 a	Central Message	LIVE CALL IN					Variety	3:30 a
4:00 a	Bible & Life	Talk to Me					Profiles	4:00 a
4:30 a	Good News	LIVE CALL IN					Super Handyman	4:30 a

\* This program schedule is subject to change without notice. (Printed November 15, 1993: 1:22 PM)

# WMBC-TV 63 Programming Schedule, Dec 26 - Dec 31, 1993

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
	26	27	28	29	30	31	1	
8:00 a	Plant Groom	Gateway to Truth	Talk to Me				Talk to Me	8:00 a
8:30 a	Psychiatry & You	Mission '93	LIVE CALL IN				LIVE CALL IN	8:30 a
8:00 a	Living by the Word	Joy of Music	Good Ole Gospel	Jeany Dixon	Homeland Harmony	Dean & Mary	Beverly Exercise	8:00 a
8:30 a	God's News	You Need To Know					Paul Gaudino Exercise	8:30 a
7:00 a	Variety	Variety	Variety	Variety	Variety	Variety	Annie Oakley	7:00 a
7:30 a	Korean Programming	Variety	Variety	Variety	Variety	Variety	Robin Hood	7:30 a
8:00 a	Gospel	Morning Stretch					Golf Dynamics	8:00 a
8:30 a	Hour	Variety	Variety	Variety	Variety	Variety	See & Hear Piano	8:30 a
9:00 a	Reach Out & Touch Js	Variety	Variety	Variety	Variety	Variety	Kids Like You	9:00 a
9:30 a	Golf Dynamics	Young at Heart	Animal Clinic	Just For Us	Woman's Touch	Variety	Devey & Goliath	9:30 a
10:00 a	Movie:	Action 60's					Zoo Life	10:00 a
10:30 a	THE BIG CAT	-					Final Score	10:30 a
11:00 a	Color 1949	COPE					Wrestling	11:00 a
11:30 a		LIVE CALL IN					(WCICW)	11:30 a
12:00 N	Crosswalk	Something Beautiful					Celebrity Sports &	12:00 N
12:30 p	See & Hear Piano	-					Variety	12:30 p
1:00 p	Movie:	Movie:	Movie:	Movie:	Movie:	Movie:	Buck McNeely	1:00 p
1:30 p	RAIN	THE CARETAKERS	CASTLE IN THE AIR	FIRE OVER	THE PAINTED	SABOTAGE	Hook On Fish'n	1:30 p
2:00 p		DAUGHTER		ENGLAND	DESERT		Big Game Adv	2:00 p
2:30 p	1932	1953	1951	1937	1932	1936	John Fox Outdoor	2:30 p
3:00 p	Fun Fishing	Variety	Variety	Variety	Variety	Variety	Outdoors/Dean Durham	3:00 p
3:30 p	Texas Angler	Variety	Variety	Variety	Variety	Variety	Honey Hole	3:30 p
4:00 p	Scuba World	The Children's Room					Freshwater Adventure	4:00 p
4:30 p	On Pit Road	Vintage Cartoons					See & Hear Piano	4:30 p
5:00 p	Little Peoples Theater:	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Variety	Variety	5:00 p
5:30 p	THE LITTLE PRINCESS	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Pasquale's	Variety	5:30 p
6:00 p	AND A VISIT FROM	Sunshine Factory	Gerbert	Sunshine Factory	Agape Land	Sunshine Factory	Cookware	6:00 p
6:30 p	CHRISTMAS ELF 1939	John Ankerberg	Catch The Spirit	There's Hope	Mission '93	Prestonwood Presnt.	Home Town	6:30 p
7:00 p	Country	Jewish Voice	Docunews	Country	Docunews	Docunews	Good Ole Gospel	7:00 a
7:30 p	Count Down	Docunews	-	Count Down	-	-	Southern Gospel Music	7:30 p
8:00 p	Movie:	-	Variety	Auto Vision	Life Choice	Sell New England	Sing	8:00 p
8:30 p	MEET JOHN DOE	Capital News					Out America	8:30 p
9:00 p		Variety	American Trucking	Variety	Variety	Variety	Rally	9:00 p
9:30 p		Variety	Treasure Search	Variety	Variety	Variety	Tonight	9:30 p
10:00 p		Variety	Variety	Movie:	Movie:	Movie Special: 1962	Family	10:00 p
10:30 p	1941	Variety	Movie:	SUNDOWN	TERROR BY NIGHT	NEWPORT JAZZ	Showcase	10:30 p
11:00 p	Variety	Power Play	PRISON TRAIN			FESTIVAL	Variety	11:00 p
11:30 p	Inside Hair Fashion	Country	1938	1941	1946	Hollywood New Year	Variety	11:30 p
12:00 M	Gospel	Variety	Variety	Variety	Variety	Variety	Family Net	12:00M
12:30 a	Soundstage	Variety	Variety	Variety	Variety	Variety	Movie	12:30 a
1:00 a	Word of God	Variety	Variety	Variety	Variety	Variety	Classics	1:00 a
1:30 a	Changed Lives	Variety	Variety	Variety	Variety	Variety	Variety	1:30 a
2:00 a	Family	Variety	Variety	Variety	Variety	Variety	Family Net	2:00 a
2:30 a	Enrichment	CCM-TV	Lightmusic	Lightmusic	Lightmusic	Solid Rock VDO	Movie	2:30 a
3:00 a	Catch the Sprit	Talk to Me					Classics	3:00 a
3:30 a	Central Message	LIVE CALL IN					Variety	3:30 a
4:00 a	Bible & Life	Talk to Me					Profiles	4:00 a
4:30 a	Good News	LIVE CALL IN					Super Handyman	4:30 a

\* This program schedule is subject to change without notice. (Printed November 15, 1993: 1:21 PM)

CHILDREN'S PROGRAMMING BROADCAST BY WMBC-TV


The Children's Room - 4:00 - 4:30 p.m., Monday - Friday  
Vintage Cartoons - 4:30 - 5:00 p.m., Monday - Friday  
Sunshine Factory - 6:00 - 6:30 p.m., Monday, Wednesday,  
and Friday  
Gerbert - 6:00 - 6:30 p.m., Tuesday  
Agape Land - 6:00 - 6:30 p.m., Thursday  
Kids Like You - 9:00 - 9:30 a.m., Saturday  
Davey & Goliath - 9:30 - 10:00 a.m., Saturday  
Zoo Life - 10:00 - 10:30 a.m., Saturday

DECLARATION

I, Sun Young Joo, do hereby declare and state under penalty of perjury that, to the best of my knowledge and belief, the following is true and correct:

1. I am the president, treasurer, and a director of Mountain Broadcasting Corporation ("Mountain"), licensee of television station WMBC-TV in Newton, New Jersey. I also serve as general manager of the station.

2. I have read the foregoing Comments to be submitted by Mountain in MM Docket No. 93-290. The facts included in the Comments are true and correct to the best of my personal knowledge, information, and belief.

By:   
Sun Young Joo

Date: December 18, 1993

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 76.51	)	MM Docket No. _____
of the Commission's Rules to	)	
Include Newton, New Jersey in	)	
the Market Currently Designated	)	
the "New York, New York-Linden-	)	
Paterson-Newark, New Jersey"	)	
Market	)	
TO: Chief, Mass Media Bureau		

PETITION FOR RULEMAKING

Mountain Broadcasting Corporation ("Mountain"), permittee of television station WMBC-TV, which operates on Channel 63 in Newton, New Jersey, by its attorneys, hereby respectfully requests that the Commission commence a rulemaking proceeding to amend Section 76.51 of the its rules, 47 C.F.R. § 76.51, to redesignate the "New York, New York-Linden-Paterson-Newark, New Jersey" market as the "New York, New York-Linden-Paterson-Newark-Newton, New Jersey" market. This action is essential in order to make Section 76.51 comport with market realities. The adoption of a market designation that includes Newton, New Jersey will facilitate equal competition between WMBC-TV, a recently built UHF station, and the other stations in the market with respect to their carriage on cable television systems. Only with this relief will cable subscribers be assured access to all stations in the market.

The need for relief is particularly acute in this case because the amount of copyright liability that WMBC-TV will incur if it asserts its mandatory signal carriage rights is so astronomical that it effectively prohibits the station from seeking must-carry status even though

it is otherwise a qualified local commercial television station entitled to carriage on cable systems serving communities within the New York ADI.<sup>1</sup> Because Newton, New Jersey, WMBC-TV's community of license, is not currently included as one of the designated communities in the New York, New York - Linden - Paterson - Newark, New Jersey market, WMBC-TV is deemed to be a "distant" or partially "distant" signal, the carriage of which causes increased copyright liability for cable systems located within the New York ADI but beyond the thirty-five-mile zone surrounding Newton. The requests for copyright indemnification that Mountain has received to date from such systems indicate that its copyright liability will be over \$9 million dollars per six-month period.<sup>2</sup> Due to WMBC-TV's limited financial resources, it cannot pay these extremely high copyright costs. As a result, WMBC-TV is effectively foreclosed from access to a substantial number of viewers who live within its local service area. As shown below, however, WMBC-TV is logically and actually an economic competitor within the New York, New York - Linden - Paterson - Newark, New Jersey market, and the requested relief would be entirely consistent with Commission precedent construing Section 76.51 and redesignating hyphenated markets.

For purposes of the Table of Major Television Markets, codified as Section 76.51 of the Commission's rules, a hyphenated market is one in which "more than one major population center support[s] all stations in the market but with competing stations licensed to different cities within the market areas."<sup>3</sup> In adopting the Cable Television Consumer Protection and

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<sup>1</sup> Section 76.55(c)(2) of the Commission's rules, 47 C.F.R. § 76.55(c)(2), provides that must-carry stations must indemnify cable operators for any increased copyright costs that may be incurred as a result of carriage of the must-carry station. See 47 C.F.R. § 76.56(a).

<sup>2</sup> See letters appended as Attachment A.

<sup>3</sup> Cable Television Report and Order, 24 RR 2d 1501, 1541 (1972).

Competition Act of 1992 ("1992 Cable Act"), Congress specifically ordered the FCC to undertake a review of Section 76.51.<sup>4</sup> As part of its rulemaking to implement the Act's mandatory signal carriage and retransmission consent provisions, the FCC addressed the Congressional directive concerning Section 76.51. The agency adopted a special expedited rulemaking procedure for consideration of requests to modify Section 76.51.<sup>5</sup> Under this approach, the Commission authorized its staff, on delegated authority, to issue a notice of proposed rulemaking based on receipt of a rulemaking petition without first seeking comment on the petition itself. The Commission stated that, after reviewing the comments received in response to such a notice, it would add a new community to a market designation if the comments demonstrated "commonality between the proposed community to be added . . . and the market as a whole."<sup>6</sup> In an action taken since releasing the Report and Order, the Commission has made clear that "commonality" is to be measured by reference to the same evidentiary standards applied in previous Commission precedents modifying Section 76.51.<sup>7</sup>

The Commission's market redesignation decisions issued prior to the Report and Order determined the commonality of the proposed community with the existing market through an evaluation of the following four factors:

- (1) the distance between the proposed community and the market-designated communities;

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<sup>4</sup> 47 U.S.C.A. § 534(f) (1993).

<sup>5</sup> Report and Order (MM Dkt. Nos. 92-259 et al.), FCC 93-144, released March 29, 1993 ("Report and Order"), at paragraph 50.

<sup>6</sup> Id.

<sup>7</sup> Report and Order (MM Dkt. No. 92-306) (Clermont, Florida), DA 93-579, released May 19, 1993, at paragraph 3, citing Major Television Markets (Fresno-Visalia, California), 57 RR 2d 1122 (1985).

- (2) the extent that redesignation to include the proposed community would allow the station additional rights in areas beyond its Grade B contour;
- (3) the particularized need of the station; and
- (4) the resulting benefit to the public from redesignation.<sup>8</sup>

Application of these particular factors helps the Commission determine whether the station at issue both logically and actually competes with other stations in its hyphenated market and, as a result, whether market redesignation will "equalize competition" and correct competitive imbalances. In WMBC-TV's case, evaluation of these factors demonstrates that redesignation is not only compelled by market realities but desperately needed to correct market dysfunction.

First, Newton, New Jersey is less than 45 miles from all of the currently designated communities in the New York market.<sup>9</sup> The Commission previously has redesignated market names to include communities separated by much greater distances.<sup>10</sup> Moreover, although Newton, New Jersey is not immediately contiguous to the other designated communities, the

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<sup>8</sup> Major Television Markets (Fresno-Visalia, California), 57 RR 2d at 1124; Television Muscle Shoals, Inc., 48 RR 2d 1191, 1193-94 (1981).

<sup>9</sup> Based on distance calculations between the communities, Newton is 44.73 miles from New York, New York; 38.86 miles from Linden, New Jersey; 32.14 miles from Paterson, New Jersey; and 37.30 miles from Newark, New Jersey. Derivation of these distances is explained in Attachment B.

<sup>10</sup> For example, in Major Television Markets (Melbourne, Florida), 57 RR 2d 685 (1985), in which the Commission added Melbourne and Cocoa, Florida to the Orlando-Daytona Beach market designation, Melbourne, Florida was considered proximate to Orlando and Daytona Beach even though it is some 56 miles from Orlando and approximately 82 miles from Daytona Beach. Clearly, Newton is much more proximate to every currently designated community in the New York market than Melbourne was to the closest community in the Orlando - Daytona Beach, Florida market. In Report and Order (Clermont, Florida), DA 93-579, supra note 7, the Commission added Clermont to the market designation; Clermont is some 77 miles from Melbourne and 63 miles from Daytona Beach.

Commission has very recently articulated that communities need not be "directly adjacent" to be considered in the same hyphenated market.<sup>11</sup>

The Grade B contour of WMBC-TV also demonstrates that the station competes with other stations in the New York market. As shown by the map appended as Attachment C, the Grade B contour of WMBC-TV reaches a substantial portion of all the currently designated communities in the New York market, and it significantly overlaps the Grade B contours of the commercial broadcasting stations licensed to these currently designated communities. Moreover, all but five of the twenty-two television stations in the large New York ADI cast a Grade B contour over Newton, New Jersey.<sup>12</sup> Consequently, WMBC-TV's requested change in Section 76.51 would not greatly extend its access to viewers beyond its own Grade B contour.<sup>13</sup> The fact that WMBC-TV actually does and can logically be expected to rely on the New York market for viewership is further verified by the fact that WMBC-TV is included in the New York ADI as defined by Arbitron.

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<sup>11</sup> Report and Order (Clermont, Florida), MM Docket 92-306 at paragraph 3 (released May 19, 1993).

<sup>12</sup> According to Broadcasting & Cable Market Place 1992 at E-66, twenty-two stations are included in the New York ADI. Based on the depiction of these stations' Grade B contours in the TV & Cable Factbook, vol. 61, Stations Vol., the Grade B contours of only WHAI(TV), Bridgeport, Connecticut; WTZA(TV), Kingsport, New York; WLIG(TV), Riverhead, New York; WHSI(TV), Smithtown, New York; and WTBY(TV), Poughkeepsie, New York fail to reach Newton. WTBY(TV)'s Grade B contour, in particular, just barely fails to cover Newton, falling within less than five miles of the town.

<sup>13</sup> The Commission has recognized that some extension of rights into areas beyond a station's Grade B contour is permissible in a hyphenated market as long as the station "largely gain[s] such rights in a significant area within that contour." Major Television Markets (Melbourne, Florida), 57 RR 2d at 692. In that case, the Commission recognized that Melbourne was included in the Orlando-Daytona Beach market despite the fact that the Melbourne television station's Grade B contour did not extend to Daytona Beach. Cf. Television Muscle Shoals, Inc., 48 RR 2d 1191 (1980).

Most significantly, WMBC-TV has a particularized need for market redesignation. Without such change, it is unlikely that WMBC-TV will be carried on many of the cable systems in its ADI. Although WMBC-TV has mandatory signal carriage rights throughout the New York ADI, it can in no way afford to pay the over \$9 million in copyright liability that the letters in Attachment A demonstrate will be due on a semi-annual basis. The estimated copyright costs for cable carriage are so staggering that WMBC-TV is, in effect, prohibited from exercising its must-carry rights. Preservation of the status quo will mean that a significant portion of the viewers within WMBC-TV's service area will be denied access to its programming. The concomitant loss of advertising revenues caused by such artificial limitation of WMBC-TV's audience will definitely jeopardize the continued survival of the station.

On the other hand, it is beyond dispute that redesignation of the existing New York market will greatly benefit the viewers in the area and advance concerns that lie at the heart of the FCC's public interest mandate. First, following a full and lengthy comparative hearing involving numerous challengers, Mountain was found to be the superior applicant, comparatively best qualified to serve the public interest.<sup>14</sup> Second, WMBC-TV would increase the diversity of programmers in the market because it is wholly-owned by minorities and is not affiliated with any of the major television networks. Significantly, all of the voting shareholders of the permittee work full time in management positions at the station.

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<sup>14</sup> Bogner Newton Corp., 2 FCC Rcd 4792 (1987). The FCC Review Board affirmed this decision in Newton Television Limited, 3 FCC Rcd 553 (1988), and the full Commission sanctioned this result. Newton Television Limited, 4 FCC Rcd 2561 (1989). On reconsideration, the Commission reaffirmed its prior decision. Newton Television Limited, 5 FCC Rcd 2755 (1990).

Mountain's qualifications remained untarnished throughout this intense administrative scrutiny. As a consequence of the extended period of review, WMBC-TV began broadcasting only a few months ago. See FCC File No. BLCT-930505KE.

The public would also be served by Commission action facilitating carriage of WMBC-TV on the cable systems throughout the ADI because of the unique programming that the station offers. As an independent station, WMBC-TV offers a wealth of non-violent family oriented programming such as, "Family Net Drama," "Family Net Music," and "Lifestyle Magazine." For children, WMBC-TV provides a wide variety of responsible programming such as "Davey & Goliath," "Act It Out," and "Just Kids". The station also offers programming focusing on outdoor activities, self-help, financial guidance, and religion in order to reach a wide, diverse audience. On a daily basis, WMBC-TV also broadcasts one hour of local news and one hour of community-oriented non-entertainment programming, further demonstrating its commitment to the area.<sup>15</sup>

Facilitating WMBC-TV's ability to compete will also advance the well-documented concerns of the Commission and Congress in assuring provision of adequate television service to residents of the state of New Jersey. For many years, there was not a single commercial VHF station licensed to New Jersey and serving the viewing needs of its residents.<sup>16</sup> In the mid-1970's, the FCC spent several years studying television service in New Jersey. Although it rejected requests for amendments to the Table of Allotments, the Commission did find a need for augmenting locally-oriented broadcasting service for New Jersey.<sup>17</sup>

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<sup>15</sup> A Sample Programming Guide is attached hereto as Attachment D.

<sup>16</sup> Channel 13 was then and continues to be listed in the Table of Allotments as a Newark, New Jersey commercial VHF assignment, but in 1961 the FCC approved the assignment of the channel's license from a commercial operator to a noncommercial operator in New York. See NTA Television Broadcasting Corp., 44 FCC 2563 (1961).

<sup>17</sup> First Report and Order and Further Notice of Proposed Rulemaking (Docket No. 20350), 58 FCC 2d 790; Second Report and Order (Docket No. 20350), 59 FCC 2d 1386; Third Report and Order (Docket No. 20350), 62 FCC 2d 604 (1986).

Similarly, ensuring viewer access to WMBC-TV will further the Commission's interest in assuring the competitive equality of UHF broadcasters. For over three decades, the FCC and Congress have been concerned with fostering not only the growth of UHF stations such as WMBC-TV but their comparability vis-a-vis VHF broadcast facilities. The All-Channel Receiver Act of 1962 gave the Commission the authority to require that television receivers be capable of receiving UHF as well as VHF channels.<sup>18</sup> Since its passage, the FCC's concern over UHF has been reflected in adoption of numerous technical regulations implementing the Act as well as regulations favoring UHF stations in other substantive areas such as station ownership. For example, between 1970 and 1973, the Commission exceeded the basic requirements of the 1962 legislation by requiring TV receivers to have comparable tuning for UHF and VHF television channels.<sup>19</sup> In 1976, the agency mandated that television receivers include a new UHF receiving antenna if they were supplied with a VHF receiving antenna.<sup>20</sup> In 1978, the FCC established the UHF Comparability Task Force, which worked over the next

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<sup>17</sup>(...continued)

Not until Congress amended the Communications Act to include Section 331 and the FCC allowed RKO's WOR-TV to move from New York City to Secaucus, New Jersey did the state obtain a commercial VHF station licensed to a community within its borders. 47 U.S.C.A. § 331. In *Multi-State Communications, Inc. v. FCC*, 728 F. 2d 1519 (D.C. Cir. 1984), the Commission's order reallocating WOR-TV's Channel 9 to Secaucus and renewing its license was affirmed.

<sup>18</sup> The Act's provisions are codified as Section 303(s) of the Communications Act, 47 U.S.C. § 303(s).

<sup>19</sup> *E.g.*, Report and Order (Docket No. 18433), 21 FCC 2d 245 (1970); Memorandum Opinion and Order (Docket No. 19722), 43 FCC 2d 395 (1973).

<sup>20</sup> Report and Order (Docket No. 20839), 62 FCC 2d 164 (1976).

four years to address specific improvements needed to ensure the comparability of UHF reception.<sup>21</sup>

In the multiple ownership area, the FCC has given UHF stations special consideration in the application and enforcement of its rules. For instance, for many years the FCC's multiple ownership rules excepted UHF licensees from certain requirements and provided that waiver requests involving UHF cross-ownership issues were to be evaluated on a case-by-case basis.<sup>22</sup> When the FCC adopted its current national multiple ownership rules, it provided a special "discount" for UHF stations in calculating the national audience reach of television stations licensed to a single group owner.<sup>23</sup>

Other than WWOR-TV, WMBC-TV today is the only English-language commercial television station licensed to northern New Jersey which does not employ a home shopping format. It is the only such UHF station licensed to northern New Jersey.<sup>24</sup> As shown by the program schedule appended as Attachment D, WMBC-TV provides locally-originated news and community programs designed to meet the needs of New Jersey residents as well as others in its viewing area. Thus, facilitating WMBC(TV)'s ability to compete will meet not only the

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<sup>21</sup> Report and Order (Gen. Dkt. No. 78-391), 90 FCC 2d 1121 (1982).

<sup>22</sup> Note 4, 47 C.F.R. § 73.636 (1988). This provision was deleted upon the FCC's overall liberalization of its radio-television cross-ownership rules. Report and Order (MM Dkt No. 87-7), 65 RR 2d, 589; Memorandum Opinion and Order (MM Dkt. No. 87-7), 66 RR 2d 1115 (1989).

<sup>23</sup> Memorandum Opinion and Order (Gen. Dkt. No. 83-1009), 100 FCC 2d 74 (1985).

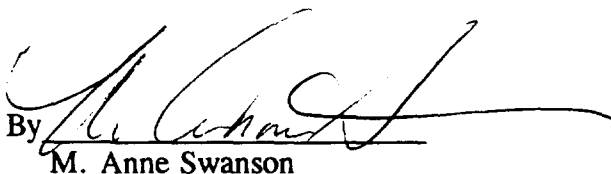
<sup>24</sup> WXTV(TV), which broadcasts on Channel 41 in Paterson, New Jersey, and WNJU(TV), which operates on Channel 47 in Linden, New Jersey, are both Spanish-language stations. TV & Cable Factbook, vol. 61, Stations vol. at A-799 & A-797. WHSE(TV), which broadcasts on Channel 68 in Newark, New Jersey, employs a home shopping format. *Id.* at A-796. WNJM(TV), which operates on Channel 50 in Montclair, New Jersey, and WFME-TV, which operates on Channel 66 in West Milford, New Jersey, are noncommercial educational stations as is WNET(TV) discussed above at note 16.

Commission's long established concern with the provision of adequate television service to New Jersey but also its equally well-established interest in ensuring a fair competitive arena for UHF television.

WHEREFORE, for the foregoing reasons, WMBC-TV respectfully requests that the Commission commence a rulemaking proceeding to amend Section 76.51 of its rules, 47 C.F.R. § 76.51, to redesignate the "New York, New York-Linden-Paterson-Newark, New Jersey" market as the "New York, New York-Linden-Paterson-Newark-Newton, New Jersey" market.

Respectfully submitted,

MOUNTAIN BROADCASTING  
CORPORATION

By   
M. Anne Swanson

of

Koteen & Naftalin  
Suite 1000  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Its Attorneys

June 14, 1993

DECLARATION

I, Sun Young Joo, do hereby declare and state under penalty of perjury that the following is true and correct:

1. I am the President, Treasurer and a Director of Mountain Broadcasting Corporation, Permittee of television station WMBC-TV in Newton, New Jersey. I also serve as General Manager of the station.
2. I have read the foregoing Petition for Rulemaking of Mountain Broadcasting Corporation. The facts included in the Petition are true and correct to the best of my personal knowledge, information, and belief.

By: 

Sun Young Joo

Date: June 10, 1993

Attachment A